

IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF NEW MEXICO

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CLERK OF COURT

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

v.

RAMON ARAGON, *et al.*,

Defendants.

69cv07941 JEC-ACE

RIO CHAMA STREAM SYSTEM
Rio Gallina, Section 5

Subfile Nos: CHGA-004-0003
CHGA-004-0004

STATE OF NEW MEXICO'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW the plaintiff State of New Mexico, *ex rel.* State Engineer, by and through his attorneys, and respectfully submits proposed Findings of Fact and Conclusions of Law in connection with the hearing before Special Master Vickie L. Gabin for disputed subfiles CHGA-004-0003 and CHGA-004-0004.

PROPOSED FINDINGS OF FACT

1. The Court has jurisdiction over the parties and subject matter herein.
2. On October 2, 2000 (Docket No. 5965) Faye Davis filed a claim for water rights appurtenant to 6.1 acres of land she owns in Gallina, New Mexico mapped as Subfile CHGA-004-0003.
3. On November 20, 2000 (Docket No. 6029), Abram Cordova filed a claim for water rights appurtenant to 6.2 acres of land he owns in Gallina, New Mexico as shown on the color subfile map for Subfile CHGA-004-0004.

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4. The 6.1 acre tract for which Faye Davis claims water rights under Subfile CHGA-004-0003 is adjacent to, and to the immediate east of, the 6.2 acre tract of land for which Abram Cordova claims water rights under Subfile CHGA-004-0004.

5. The water rights claims of Faye Davis and Abram Cordova under Subfiles CHGA-004-0003 and CHGA-004-0004 (hereinafter "the claimed tracts") were consolidated for trial beginning January 28, 2003.

6. The claimed tracts are natural wetlands subject to periodic flooding from the Rio Capulin.

7. There is a natural high water table in the area of claimed tracts.

8. The Rio Capulin is a potential point of discharge for a sub-regional confined flow system in the Poleo sandstone unit of the Chinle Formation in the area of the claimed tracts.

9. The claimed tracts are probably benefitting from an artesian upflow of ground water from the Poleo sandstone unit to the Rio Capulin and its alluvium.

10. The claimed tracts may also be benefitting from localized aquifers perched upon clay layers within the alluvium of the Rio Capulin.

12. The claimed tracts are located within the natural channel of the Rio Capulin.

13. There is no man-made water distribution system on the claimed tracts.

14. There is no man-made structure for the diversion and transport of surface water out of the natural channel of the Rio Capulin used in connection with the claimed tracts.

15. Faye Davis and Abram Cordova failed to prove that spreading surface water within the natural channel of the Rio Capulin over the claimed tracts during periods of low flow in the river represents the beneficial use of water.

16. In the absence of a man-made diversion and transport of surface water out of the natural channel of the Rio Capulin, Faye Davis and Abram Cordova have no claim for water rights in connection with their use of the claimed tracts for the cutting of grasses or grazing.

17. Faye Davis and Abram Cordova failed to prove their claims for the appropriation of surface water from the Rio Capulin for agricultural purposes in connection with their uses of the claimed tracts.

18. The claimants' activities in connection with the cutting of grasses and grazing on the claimed tracts is not contrary to law; however, these activities do not give rise to an appropriation of surface water for agricultural purposes under New Mexico law.


PROPOSED CONCLUSIONS OF LAW

1. There are no water rights appurtenant to the 6.1 acre tract of land in Gallina, New Mexico mapped as subfile CHGA-004-0003, and that tract should be classified as "no right" or without water rights.

2. There are no water rights appurtenant to the 6.2 acres of land in Gallina, New Mexico mapped as subfile CHGA-004-0004, and that tract should be classified as "no right" or without water rights.

DATED: May 2, 2003

Respectfully submitted,


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CERTIFICATE OF SERVICE

I certify that a copy of New Mexico's Proposed Findings of Fact and Conclusions of Law was mailed to the following persons on May 2, 2003.



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